IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

W.A.Nos.156 of 2000 and 45 of 2003

W.A.No.156 of 2000
Sri Devi Nagar Residences Welfare
Association, a registered Society
regd. No.198/98 - rep. by its
President, G.P.Godhanavalli
residing at No.43, 6A-3
M.G.G.Illam, II Street
Sri Devi Nagar, Ganapathy
Coimbatore - 641 006. .. Appellant

Vs.

1.Subbathal
2.Kamalammal
3.Srimanidevi
4.The Commissioner
Coimbatore City Municipal Corporation
Coimbatore-641 001
5.The Deputy Director of
Town and Country Planning
Coimbatore-Nilgiri Region
Coimbatore-641 018
(Impleaded by order dated 3.11.2006
made in WAMP No.1774/2006) .. Respondents

W.A.No.45 of 2003
The Commissioner
Coimbatore City Municipal Corporation
Coimbatore .. Appellant

Vs.

1.Subbathal
2.Kamalammal
3.Srimanidevi .. Respondents

Prayer: Appeals under Clause 15 of the Letters Patent against the order of the learned Single Judge dated 19.8.1999 made in W.P.No.14413 of 1997. This writ petition presented to this Court under Article226 of the constitution of India to issue a writ of mandamus forbearing the respondent, his subordinates men and servants in any way interfering with the peaceful possession and enjoyment to the vacant land in Coimbatore

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Registration District, Ganapathy Town Panchayat, Sridevi Nagar, S.F.No.412, East of 30 ft. layout road, west of poromboke channel and 15 ft. existing road, south of site No.58 North of 30 ft. road, mesuring: on the north 81 1/2 ft., on the south 76 ft., on the west 164 1/2 ft., and on the east 171 1/2 ft. except by due proces of law.

For Appellant in W.A.No.156/2000 : Mr.K.Alagirisami, Senior Counsel for M/s.P.K.Rajagopal

For Respondents 1 to 3 in both Appeals : Mr.M.Venkatachalapathy

For Appellant in W.A.No.45/2003 and 4th Respondent in W.A.No.156/2000 : Mr.R.Sivakumar

For 5th respondent in W.A.No.156/2000 : Mr.G.Sankaran Addl. Government Pleader

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

Whether a portion of land reserved for public purpose in a layout approved by the local body can be used for any other purpose is the specific question that arises for our consideration in the above appeals, while the issue at large is whether the land reserved for public purpose in any layout or in a development plan or master plan can be used for any other purpose at a later stage?

2. For the purpose of convenience, parties are arrayed as per their rank in W.A.No.156 of 2000.

3.1. These appeals are directed against the common order dated 19.8.1999 made in W.P.No.14413 of 1997. W.A.No.156 of 2000 is preferred by the residents of the locality, who have purchased plots from respondents 1 to 3, who are the legal heirs of the original owner of the land of an extent of 6.07 acres in Survey No.412, Sreedevi Nagar, Ganapathy, Coimbatore, which was, concededly, sold under a layout approved in the year 1974 by the then Ganapathy Town Panchayat, of course, after the prior permission of the fifth respondent in his proceedings bearing No.L.P.Dm. (DDT & CP) No.49/74, dated 17.7.1974. In the said layout, an extent of 14168 sq.ft. (East West 81.1/2' on the North, East West 76' on the South, North South 164.1/2' on the West and North South 171.1/2' on the East) was reserved for public purpose.

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3.2. While according permission, the fifth respondent, by his proceedings dated 17.7.1974 addressed to the Executive Officer, Ganapathy Town Panchayat imposed 13 conditions, which remain unchallenged by the owners of the layout land for all these years, of which the following are the relevant conditions to be referred to:

"1. ... நகரமைப்பு இயக்குநரின் முன் அனுமதியின்றி அங்கீகரிக்கப்பட்ட வரைபடத்திற்கு மாறாக தனிப்பட்ட மனையின் அளவுகளின் அமைப்பில் மாற்றங்கள் செய்வதோ அல்லது வரையறுக்கப்பட்ட பொது உபயோகத்திற்கான இடங்களில் மாறுதல் செய்வதோ கூடாது.

...

4. ... அங்கீகரிக்கப்பட்ட வரைபடத்தில் காட்டப்பட்டுள்ள எந்த ஒரு மனையும் பொது காரியங்களுக்காக தோ்வு செய்யப்பட்டுள்ள மனைகள் தவிர குடியிருப்பு வீடு கட்டுவதற்கு மட்டுமே பயன்படுத்தப்பட வேண்டுமே அல்லாது, கடை, பண்டகசாலை மற்றும் குடியிருப்பு அல்லாது குடியிருப்பைச் சோ்ந்த உபயோகத்திற்கல்லாத கட்டிடம் கட்டுவதற்குப் பயன்படுத்தக் கூடாது. பொது வசதிகளுக்காக தோ்வு செய்யப்பட்டுள்ள இடங்கள் யாவும் அங்கீகரிக்கப்பட்ட வரைபடங்களில் குறிக்கப்பட்டுள்ள உபயோகங்களுக்காக மட்டுமே பயன்படுத்தப்பட வேண்டும்.

...

12. மனைகளின் சொந்தக்காரர் மேற்படி நிபந்தனைகளுக்கு உட்படுவதாக எழுத்து மூலமாக சம்பந்தப்பட்ட உள்ளாட்சி நிர்வாக அதிகாரியுடன் ஒப்பந்தம் செய்து கொள்ள வேண்டும். மனைகள் விற்கப்படுவதும் அல்லது குத்தகைக்கு விடப்படுவதும் இந்த நிபந்தனைகளுக்கு உட்பட்டுத்தான் செய்யப்படவேண்டும். மனை விற்பவரையும் மற்றும் வாங்குபவரையும் கட்டுப்படுத்தும் வகையில் இந்த நிபந்தனைகள் விற்பனை பத்திரங்களின் பகுதியாகச் சோ்க்கப்படவேண்டும்.

Translated version of the above conditions:

1. ... without the permission of the Director of Town and Country Planning, no changes shall be made in the extent of the plot or no change shall be made in the place reserved for public purpose.

...

4. ... the place reserved for public purpose, as per the approved layout, shall be used only for the purpose for which it was earmarked.

...

12. the land owner shall enter into a written agreement with the local body that he would abide by the conditions. The plots shall be sold or leased out subject to the conditions in the agreement. In order to make the land owner and the purchaser bind by the conditions laid down in the agreement, the conditions shall form part of the sale deed."

(emphasis supplied)

3.3. As the impugned portion of the land, which was reserved for public purpose, as per the layout referred to above, was kept vacant, the fourth respondent, by resolution No.836 dated 16.6.1995, resolved to declare the area reserved for public purposes so that the Corporation can provide water supply, drainage, street, lights, etc. A notification to that effect was issued under Section 459 of the Corporation Act, published

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in the Gazette on 30.6.1995, calling for objection, but no objection was received by the Corporation. Therefore, a final resolution was also issued to that effect in resolution 1135, dated 23.11.1996.

3.4. Enraged by the above resolution, respondents 1 to 3 filed O.S.No.759 of 1997 on the file of District Munsif, Coimbatore for bare injunction, but, finally withdrew the said suit and filed W.P.No.14413 of 1997 for issue of a writ of Mandamus forbearing the fourth respondent, his subordinates, men and servants from in any way interfering with the peaceful possession and enjoyment of the vacant land, which was reserved for public purpose, referred to above.

3.5. In the writ petition, the residents of the locality, who formed a registered association, by name Sri Devi Nagar Residences Welfare Association, proposed to implead themselves as a party respondent by preferring WPMP No.13730 of 1999 and also contested the writ petition. That apart, the fourth respondent also resisted the writ petition. After hearing all the parties, the learned Single Judge, by order dated 19.8.1999, refused to permit the residents of the locality to implead themselves as party in the writ petition holding that they are not necessary parties for the disposal of the writ petition. However, on the merits of the case, the learned single judge held that the order was subject to the undertaking given by the learned counsel for respondents 1 to 3 that they would utilise the land only for public purpose. However, it was made clear that the said order, in any way, would not relate to the roads if they had been declared as public by the fourth respondent.

3.6. Aggrieved by the said order of the learned Single Judge dated 19.8.1999, both the Residences Welfare Association and the Corporation have filed these appeals respectively, necessitating us to decide on the issue referred to above.

4. It is not in dispute that in discharging the obligation, the original owner of the land sought for the approval of layout of the land in question by the then local body, Ganapathy Town Panchayat, for selling the sites for construction of buildings and the layout was approved by the fifth respondent by proceedings dated 17.7.1994 referred to above.

5. It is a settled law that the object of approving the layout, before converting the land into house sites, is to regulate the development in the locality so as to secure the present and future inhabitants sanitary conditions, amenity and convenience, with the prior permission of the fifth respondent. The approval of the lay out, is, therefore, intended to secure amenity and convenience to the present and future residents in connection with laying out and use of lands. Therefore, regard is to be had in the making of a clear Town Planning in the locality to the laying out and use of neighbouring lands as well as to that of the land which is the actual subject matter of the layout. The result should be that as successive areas are developed, they should fit into one another and eventually form a harmonious whole. One of the most

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important things for consideration in the preparation of the layout is not only formation of roads, but also utilisation of the lands reserved for public purpose.

6.1. The public purpose, of course, cannot and should not be precisely defined and its scope and ambit be limited. The public purpose is not static. It changes with the passage of time, need and requirement of the community. But, broadly speaking, public purpose means the general interest of the community, as opposed to the interest of an individual.

6.2. The expression "public purpose" is not capable of a precise definition and has not a rigid meaning. It can only be defined by a process of judicial inclusion and exclusion. In other words, the definition of the expression is elastic and takes its colour from the statute in which it occurs, the concept varying with the time and state of society and its needs. Whatever furthers the general interests of the community as opposed to the particular interest of the individual must be regarded as a public purpose. With the onward march of civilization our notions as to the scope of the general interest of the community are fast changing and widening with the result that our old and narrower notions as to the sanctity of the private interest of the individual can no longer stem the forward flowing tide of time and must necessarily give way to the broader notions of the general interest of the community. The emphasis is unmistakably shifting from the individual to the community. The words "public purposes" used in Article 23(2) indicate that the Constitution uses those words in a very large sense. In the never-ending race the law must keep pace with the realities of the social and political evolution of the country as reflected in the Constitution. If, therefore, the State is to give effect to these avowed purposes of our Constitution we must regard as a public purpose all that will be calculated to promote the welfare of the people as envisaged in these directive principles of State policy whatever else that expression may mean, vide State of Bihar v. Kameshwar Singh, AIR 1952 SC 252.

6.3. It is impossible to precisely define the expression "public purpose". In each case all the facts and circumstances will require to be closely examined in order to determine whether a "public purpose" has been established. Prima facie the Government is the best judge as to whether "public purpose" is served by issuing a requisition order, but it is not the sole judge. The Courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose, vide State of Bombay v. R.S.Nanji, AIR 1956 SC 294

7. In G.N. Khajuria (Dr) v. Delhi Development Authority, (1995) 5 SCC 762 = AIR 1996 SC 253, where in a land reserved for public park in the approved layout plan of a residential colony, when an unauthorised allotment was given to the school, the Apex Court heavily came down against the Officer, who by misusing his power made unauthorised allotment

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and permitted unauthorised construction, and held that such reallotment is not only illegal but also unlawful.

8. In Bangalore Medical Trust vs. B.S.Muddappa, 1991 (4) SCC 54, Justice R.M.Sahai, held Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

9. Again in Pt.Chet Ram Vashist v. Municipal Corporation of Delhi 1995 (1) SCC 47, the Apex Court while dealing with the portion of the land which was reserved for public purpose has clearly laid down the law as hereunder:

> " 6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in

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the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law.

.....

8. For these reasons even though the judgment and decree of the High Court are liable to be set aside but we refrain from doing so. Yet in order to protect interests of the owners of house and residents of the colony it is directed that the order of the High Court shall stand modified to the following effect :

(1)The Corporation shall have right to manage the land which was earmarked for school, park etc.

(2)The Corporation shall not have any right to change the user of land which shall be for beneficial enjoyment of the residents of the colony.

(3)It is left open to the Corporation to get the land transferred in its favour after paying the market price as prevalent on the date when the sanction to the layout plan was accorded. "

(emphasis supplied)

10. We, therefore, appreciate the interest of the residents of the area, who have purchased the plots as per the approved layout, that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. To that extent, we disagree with the learned Single Judge that the residents of the locality are not necessary parties for the simple reason that respondents 1 to 3 have got the layout approved, as per the proceedings dated 17.7.1994, with the specific conditions, referred to above, which becomes the part and parcel of the terms of the sale deeds. Therefore, virtually, these conditions, agreed by the land owner become the terms of covenant. Therefore, it would be too harsh to say that the residents of the locality are not proper parties.

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11. The open space in a residential area or in busy townships is treated as lung space of the area. It provides fresh air and refreshment to the persons in the neighbourhood. Its presence ameliorates the hazards of pollution and it has to be preserved and protected for the sustenance of the men around. It is for the health and well-being of the inhabitants of the residential area. The same cannot be bartered for any other purpose. Apart from that, in view of the conditions imposed by the fifth respondent, by his proceedings dated 17.7.1974 addressed to the Executive Officer, Ganapathy Town Panchayat, which remain unchallenged by the owners of the layout land for all these years, the fourth respondent is estopped from using the area set apart as open space, for any other purpose.

12. Where open space for construction of public park is preserved and earmarked in the Plan for Development of a planned town, the Authorities cannot ignore or neglect to develop that open space into a public park within reasonable time. Unless an open space reserved for a public park is developed as such, the execution of the plan will remain incomplete. Buildings, as proposed in the plan, may have come up, amenities and civic amenities may have been provided and the people may have started living in the colony, yet the plan cannot be said to have been fully executed, if an open space meant for a park is not developed as such. The duty of the authorities is to implement the plan in entirety making the area beautiful with attractive public parks. Their job is not over when the area becomes habitable.

13. Good parks expansively laid out are not only for aesthetic appreciation, but in the fast developing towns having conglomeration of buildings, they are a necessity. In crowded towns where a resident does not get anything but atmosphere polluted by smoke and fumes emitted by endless vehicular traffic and the factories, the efficacy of beautifully laid out parks is no less than that of lungs to human beings. It is the verdant cover provided by public parks and greenbelts in a town, which renders considerable relief to the restless public. Hence the importance of public parks cannot be under-estimated. Private lawns or public parks are not a luxury, as they were considered in the past. A public park is a gift of modern civilization, and is a significant factor for the improvement of the quality of life. Open space for a public park is an essential feature of modern planning and development, as it greatly contributes to the improvement of social ecology.

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14. We are therefore, of the firm opinion, that the statutes in force in India and abroad reserving open spaces for parks and play grounds are the legislative attempt to eliminate the misery of disreputably housing condition caused by urbanisation. Crowded urban areas tend to spread disease, crime and immorality. Reservation of one space for parks and play ground is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation and the Apex Court decisions

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referred supra, fully support the view that the area set apart for park as per the approved lay out plan, cannot be used or transferred for any other purpose.

15. Mr.M.Venkatachalapathy, learned senior counsel appearing for respondents 1 to 3, however, agreed that the area reserved for public purpose would not be used for any other purpose and has come forward to maintain a park in the said place.

16. In view of the above undertaking by Mr.M.Venkatachalapathy, learned senior counsel appearing for respondents 1 to 3, we pass the following directions:

(i) respondents 1 to 3 shall utilise the entire area reserved for public purpose within a maximum period of six months from the date of receipt of copy of this order;

(ii) if respondents 1 to 3 could not maintain the park within the time stipulated above, the Corporation, as a custodian of public interest, shall develop the area as a Park with the cooperation of respondents 1 to 3, with whom the title and possession would continue to remain;

(iii) the Corporation shall not collect any property tax;

(iv) the Corporation shall give access to the general public including the residents of the locality; and

(v) the Corporation is at liberty to collect necessary funds from the plot owners, who purchased the plots in the impugned layout for maintenance of the park.

17. We also direct the Chief Secretary, Local Administration Department, State of Tamil Nadu to communicate the copy of this order to all the local bodies to scrupulously apply and follow the above directions to all the layouts sanctioned or to be sanctioned. If there is any change or deviation in the purpose by the land owners or by any third party, the same shall be objected to and action shall be initiated as indicated above by the local body concerned.

For the reasons aforesaid, we hold that a portion of land reserved for public purpose in a layout or in a development plan or master plan approved by the local body cannot be used for any other purpose than the one specified therein. These appeals are ordered accordingly. No costs.

kpl/sasi

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1. The Commissioner
   Coimbatore City Municipal Corporation
   Coimbatore-641 001.

2. The Deputy Director of
   Town and Country Planning
   Coimbatore-Nilgiri Region
   Coimbatore-641 018.

3. The Chief Secretary to Government of Tamil Nadu
   Fort St George, Chennai-9.

4. The Secretary to Government
   Municipal Administration Department,
   fort St George, Chennai-9.

5. The Secretary Rural Development
   and Panchayat RaJ Administration Department,
   Fort St George, Chennai-9.

6. The Secretary
   Housing Department,
   Fort St George, Chennai

7. The Commissioner of Municipal Administration,
   Chepauk, Chennai-5.

8. The Director of Rural Development and
   Panchayat Raj Administration,
   Chennai.

9. The Director of Town and Country Planning
   Chennai

+1 cc toMr.Mathivanan, Advocat Sr.No.24727.

+1 cc to Government pleader Sr.No.23864.

+1 cc to Mr.R.Sivakumar, Advocate sr.No.23733.

+1 cc to P.K.Rajagopal, Advocate sr.No.24060.

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